

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

ELIZABETH GEISMAR,

Charging Party,

v.

MARIN COUNTY LAW LIBRARY,

Respondent.

Case No. SF-CE-159-M

PERB Decision No. 1655-M

July 2, 2004

Appearances: James Baker, Labor Relations Specialist, for Elizabeth Geismar; Murchison & Cumming by Michael B. Lawler and Ronda Crowley, Attorneys, for Marin County Law Library.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal (attached) of Elizabeth Geismar's (Geismar) unfair practice charge. The charge alleged that the Marin County Law Library violated the Meyers-Milias-Brown Act (MMBA)¹ in terminating Geismar.

After review of the entire record in this case, including the unfair practice charge, amended charge and response, the appeal and the Marin County Law Library's response to the appeal, the Board finds the unfair practice charge must be dismissed for failure to state a prima facie case. The Board hereby adopts the warning and dismissal letters of the Board agent as its own.

¹The MMBA is codified at Government Code section 3500, et seq.

ORDER

The unfair practice charge in case No. SF-CE-159-M is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

Dismissal Letter

March 1, 2004

James Baker, Labor Relations Specialist
114 Mono Avenue
Fairfax, CA 94930

Re: Elizabeth Geismar v. County of Marin (Law Library)
Unfair Practice Charge No. SF-CE-159-M; First Amended Charge
DISMISSAL LETTER

Dear Mr. Baker:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 16, 2004. Elizabeth Geismar alleges that the Marin County Law Library violated the Meyers-Milias-Brown Act (MMBA)¹ by terminating her employment.

I indicated to you in my attached letter dated January 29, 2004, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to February 5, 2004, the charge would be dismissed.

On February 4, 2004, I received a first amended charge. The amended charge contends that Ms. Geismar's termination violated several provisions of the Business and Professions Code, as well as Government Code sections 3505 and 3506. As PERB lacks jurisdiction over allegations of the Business and Professions Code, this letter will address only the allegations that the Library terminated Ms. Geismar's employment because of her protected activity and that the Library violated its local rules by having only five members on its Board of Trustees.

Ms. Geismar was employed by the Marin County Law Library as an Assistant Librarian. Ms. Geismar held this position for fifteen (15) years until her termination on July 2, 2003. The Marin County Law Library is not an agency of the County of Marin, but is instead, a separate and distinct public agency with its own Board of Trustees. As such, Ms. Geismar's employment is not guided by the rules and regulations of employment by the County, but by the Law Library's Employment Policies and those state laws governing at-will employment.

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

In June 2000, Hal Aigner was hired as the Library's Director, with the approval of the only two other employees of the library, Ms. Geismar and Pat Pal. Ms. Geismar asserts that in April 2001, Mr. Aigner began demonstrating "hostility" to her. In April 2001, Ms. Geismar met with Mr. Aigner about her job responsibilities and his performance expectations. Also in attendance at the meeting were fellow employee Pat Pal and local attorney Margaret Littlefield. At this meeting, Mr. Aigner promised to set forth the Personnel Rules for the Library. Apparently, Mr. Aigner prepared a draft of these policies but the policy was never formally adopted by the Trustees.

In March 2002, Ms. Pal resigned her employment with the Library. Ms. Geismar asserts Ms. Pal resigned because Mr. Aigner had shown her hostility as well. Shortly after Ms. Pal resigned, Ms. Geismar spoke with Mr. Aigner about Ms. Pal's resignation. It appears Ms. Geismar accused Mr. Aigner of forcing Ms. Pal to resign. Mr. Aigner became angry at this accusation and Ms. Geismar left the meeting in fear.

Ms. Geismar asserts that in the fall of 2002, Mr. Aigner and new employee Susan Sharpley began a campaign of surveillance on Ms. Geismar. Purported excerpts from Ms. Geismar's personnel file indicate that on a number of occasions, Ms. Sharpley reported allegedly inappropriate or suspicious behavior by Ms. Geismar.

On November 18, 2002, Ms. Geismar sent a memo to Mr. Aigner regarding her job assignments. The letter stated as follows:

As you will recall, approximately nearly two years ago, along with attorney Margaret Littlefield and Patricia Powell, we met to discuss my duties at MCLL. During that discussion you agreed that I would continue to work at the front desk as I have done for the past 17 years.

On at least two occasions, I have had to write you memos to document that when I come to work at the front desk you had assigned Sue to work there at my allotted time.

Subsequently, you again agreed to assign me to work the front desk on Mondays and Fridays. Contrary to our agreement, this morning when I promptly arrived to work, I found that you had again assigned Sue to work the front desk.

This turn of events baffles me. Please explain why you assigned Sue to work at the front desk when you had agreed to assign me that task on Mondays and Fridays.

During the fall of 2002 and early 2003, Ms. Geismar complained about her employment with a number of patrons at the Library. However, there are no facts demonstrating these patrons ever informed Mr. Aigner of Ms. Geismar's complaints.

In February 2003, Ms. Geismar received a letter from Mr. Aigner which stated in relevant part as follows:

1. With an eye towards the professional atmosphere of the Library, Posie Conklin, the Library's Board President, has directed that I ask you to:
 - A. Remove the art work and other materials from the book cart;
 - B. Complete accessioning (sic) the staff room, as has been the previous practice for so many years.

On May 15, 2003, Mr. Aigner agreed to Ms. Geismar's request for a scheduling change.

On June 20, 2003, Library Director Hal Aigner issued Ms. Geismar a notice of termination. The termination letter did not provide Ms. Geismar with a reason for her termination. On June 23, 2003, Ms. Geismar hand-delivered a letter to Mr. Aigner, asking for the reason behind her termination. On June 25, 2003, Ms. Geismar sent Mr. Aigner another letter regarding her termination.

On August 1, 2003, Mr. Aigner sent Ms. Geismar another letter regarding her termination. This letters stated in relevant part as follows:

After several months of inquiry and deliberation, the decision to approve termination of your employment with the Library was reached due to a continuing course of conduct that had become increasingly incompatible with Library operations as needs increase for the Library to become more technologically oriented and to serve broader, more diverse populations.

Shortly after her termination, Ms. Geismar retained the services of Labor Relations Specialist James Baker. On August 29, 2003, Mr. Baker filed an appeal of Ms. Geismar's termination with the Library's Board of Trustees. The appeal argued Ms. Geismar was technologically proficient and thus should not have been terminated. The appeal also argued Mr. Aigner was favoring some employees over others.

Based on the above stated facts, and those provided in the original charge, the charge still fails to state a prima facie violation of the MMBA, for the reasons provided below.

To establish a prima facie case of discrimination in violation of Government Code section 3506 and PERB Regulation 32603(a), the charging party must show that: (1) the employee exercised rights under MMBA; (2) the employer had knowledge of the exercise of those rights;

and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the exercise of those rights. (Campbell Municipal Employees Association v. City of Campbell (1982) 131 Cal.App.3d 416 (Campbell); San Leandro Police Officers Association v. City of San Leandro (1976) 55 Cal.App.3d 553.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action in protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following nexus factors should be present: (1) the employer's disparate treatment of the employee (Campbell, supra); (2) the employer's departure from established procedures and standards when dealing with the employee (San Leandro Police Officers Association, supra.); (3) the employer's inconsistent or contradictory justifications for its actions (San Leandro Police Officers Association, supra.); (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) employer animosity towards union activists (San Leandro Police Officers Association, supra; Los Angeles County Employees Association v. County of Los Angeles (1985) 168 Cal.App.3d 683.).

Herein, you contends Ms. Geismar engaged in protected activity when she complained about Ms. Powell's resignation, discussed her job concerns with patrons of the library, redecorated her shelving cart, asked for a job description in April 2001 and requested a schedule change. However, none of these activities rise to the level of protected activity under the MMBA, or any of its parallel statutes.

The MMBA provides employees with the right to self representation. (Gov. Code sec. 3502.) With regard to self representation, PERB has held that an individual employee engages in protected activity when he or she complains about unsafe working conditions or large class sizes. (Pleasant Valley School District (1988) EPRB Decision No. 708; Livingston Union School District (1993) PERB Decision No. 965.) However, decorating a library cart with artwork, asking for a job description and requesting a schedule change do not constitute protected activities. Finally, while complaining to patrons about working condition may constitute protected activity, the charge fails to demonstrate any of these patrons informed Mr. Aigner of Ms. Geismar's statements. As such, the charge fails to demonstrate the requisite knowledge and must be dismissed.

Even assuming that Ms. Geismar engaged in protected activity in April 2002 when she complained about Ms. Powell's resignation, the charge fails to state the requisite nexus. According to Charging Party's own facts, Mr. Aigner's hostile treatment began well before any of the alleged protected activity. Moreover, the alleged protected activity occurred months and years prior to the adverse action, thus failing to demonstrate the requisite temporal proximity. Finally, nothing herein demonstrates Mr. Aigner violated Library policies by terminating Ms. Geismar or provided shifting justifications for such termination. As such, this allegation must be dismissed.

Charging Party also contends the Library violated Business and Professions Code section 6301 by having only five board members. While Charging Party presents facts regarding state law on the subject, PERB lacks jurisdiction over such violations.

Charging Party further contends the Library violated County local rules by failing to have six Trustees. The library operates as a "special district" and is a separate and distinct employer from the County of Marin, thus County rules are inapplicable herein. As the charge does not present any Library local rules regarding the number of trustees, the charge must be dismissed.

Right to Appeal

Pursuant to PERB Regulations,² you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By _____
Kristin L. Rosi
Regional Attorney

Attachment

cc: Rhonda Crawley

Warning Letter

January 29, 2004

James Baker, Labor Relations Specialist
114 Mono Avenue
Fairfax, CA 94930

Re: Elizabeth Geismar v. County of Marin (Law Library)
Unfair Practice Charge No. SF-CE-159-M
WARNING LETTER

Dear Mr. Baker:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 16, 2004. Elizabeth Geismar alleges that the Marin County Law Library violated the Meyers-Milias-Brown Act (MMBA)¹ by terminating her employment.

Investigation of the charge revealed the following. Ms. Geismar was employed by the Marin County Law Library as an Assistant Librarian. Ms. Geismar held this position for fifteen (15) years until her termination on July 2, 2003.

The Marin County Law Library is not an agency of the County of Marin, but is instead, a separate and distinct public agency with its own Board of Trustees. As such, Ms. Geismar's employment is not guided by the rules and regulations of employment by the County, but by the Law Library's Employment Policies. The Law Library's Employment Policy states in relevant part as follows:

III. At-Will Employment: The Library is an at-will employer within the meaning of California Labor Code section 2922, operating within the scope of California and federal public policies prohibiting particular discriminatory practices. Employment by the Library does not carry the implication of a contract or of any guarantee of continuous employment for any definite or determinable period or for any specific term. . . At-will employment may be terminated at any time, with or without cause, and with or without notice. Employees who fail to perform their jobs in a satisfactory manner may be so advised,

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

and where the Library Director considers appropriate, employees may be given an opportunity to improve their performance.

* * * * *

VI. Grievance Procedures

1. Grievances are a private matter of the Library and are not to be aired within the public spaces of the Library.

2. Any grievance that cannot be resolved informally with the Director's assistance, including those regarding termination, must be submitted by the complaining employee in writing to the Library Board of Trustees. The Board of Trustees will consider the grievance at its earliest convenience and provide a written response to the grievance, including, if it finds it to be appropriate, the overruling of any decision by the Director.

On June 20, 2003, Library Director Hal Aigner issued Ms. Geismar a notice of termination. The termination letter did not provide Ms. Geismar with a reason for her termination. On June 23, 2003, Ms. Geismar hand-delivered a letter to Mr. Aigner, asking for the reason behind her termination. On June 25, 2003, Ms. Geismar sent Mr. Aigner another letter regarding her termination.

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After several months of inquiry and deliberation, the decision to approve termination of your employment with the Library was reached due to a continuing course of conduct that had become increasingly incompatible with Library operations as needs increase for the Library to become more technologically oriented and to serve broader, more diverse populations.

Shortly after her termination, Ms. Geismar retained the services of Labor Relations Specialist James Baker. On August 29, 2003, Mr. Baker filed an appeal of Ms. Geismar's termination with the Library's Board of Trustees. The appeal argued Ms. Geismar was technologically proficient and thus should not have been terminated. The appeal also argued Mr. Aigner was favoring some employees over others.

Based on the above stated facts, the charge as presently written, fails to state a prima facie violation of the MMBA, for the reasons provided below.

Herein, Charging Party contends her termination violated Government Code sections 3509(b) and (c). However, section 3509 pertains to PERB exclusive jurisdiction to investigate and

adjudicate unfair practices under the MMBA. Neither provision describes employee rights and as such, is irrelevant to the allegations in the charge.

It is assumed that Charging Party wishes to argue the Library discriminated against her in terminating her employment. To establish a prima facie case of discrimination in violation of Government Code section 3506 and PERB Regulation 32603(a), the charging party must show that: (1) the employee exercised rights under MMBA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the exercise of those rights. (Campbell Municipal Employees Association v. City of Campbell (1982) 131 Cal.App.3d 416 (Campbell); San Leandro Police Officers Association v. City of San Leandro (1976) 55 Cal.App.3d 553.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action in protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following nexus factors should be present: (1) the employer's disparate treatment of the employee (Campbell, supra); (2) the employer's departure from established procedures and standards when dealing with the employee (San Leandro Police Officers Association, supra); (3) the employer's inconsistent or contradictory justifications for its actions (San Leandro Police Officers Association, supra); (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) employer animosity towards union activists (San Leandro Police Officers Association, supra; Los Angeles County Employees Association v. County of Los Angeles (1985) 168 Cal.App.3d 683.).

The charge fails to demonstrate Ms. Geismar engaged in any protected activity prior to her termination, and as such, a finding of discrimination cannot be made. Moreover, even assuming Ms. Geismar engaged in protected activity, the charge fails to provide the requisite nexus.

Additionally, Charging Party may wish to allege the Library violated its local rules regarding employment. However, nothing provided herein demonstrates the Library violated its at-will employment or grievance policy. As such, the charge fails to state a prima facie violation of the MMBA.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an

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amended charge or withdrawal from you before February 5, 2004, I shall dismiss your charge.
If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi
Regional Attorney

KLR